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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,887	10/21/2003	Rodney George Wade	CULLE-13	2766

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EXAMINER

UPTON, CHRISTOPHER

ART UNIT PAPER NUMBER

1724

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/688,887

Applicant(s)

WADE, RODNEY GEORGE

Examiner

Christopher Upton

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2005 and 18 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,3,6 and 8-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2,3,6 and 8-14 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 October 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

1. Claim 8 is are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 depends from cancelled claim 7. It appears that the claim should depend from claim 12.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 3, 6 and 8-14 are rejected under 35 U.S.C. 103(a) as obvious over Hutter Jr.

Hutter discloses a series of three filters in a catch basin, which may consist of screens having progressively smaller apertures (see column 4, lines 37-52), supported by a carrier on a baffle, as claimed. While the drawings do not show the outlet of the catch basin being below the filters so that the lowest filter is able to dry out when water

flow ceases, it is submitted that storm drain catch basins normally have the outlet at the bottom, so that water does not stand in the drain, and that therefore, this configuration would obviously be used in the drain of Hutter.

With respect to claims 3, 6 and 8, it is submitted that the specific sizing of the screens would have been an obvious result-effective variable for one skilled in the art, depending on the characteristics of the substances to be filtered, and that therefore the sizes fail to patentably distinguish over Hutter. With respect to claims 9-11 and 13 it is submitted that a shape would have been an obvious matter of design for one skilled in the art, and therefore fails to patentably distinguish over Hutter.

4. Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The recitation of a filter pit having the structure recited in claim 12, and further including the structure of the secondary filter being below the baffle, the primary filter resting in the it above the baffle, the carrier resting on the baffle and suspending the tertiary filter from its lower portion patentably distinguishes over the prior art of record. All three filters of Hutter are supported above the baffle by the carrier.

5. Applicant's arguments filed on September 14 and October 18, 2005 have been fully considered but they are not persuasive.

Applicant argues that Hutter does not disclose a baffle supporting the carrier supporting the secondary and tertiary filters. It is submitted that the rack (14) of Hutter

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supports all three filters, and is therefore a carrier, as recited in applicant's claims. The carrier rests upon flanges (34), which form a baffle structure dividing the pit into upper and lower chambers, as recited in applicant's claims.

Applicant further argues that the tertiary filter of the instant invention is secured to a lower portion of the carrier and the secondary filter to an upper portion of the carrier. It is submitted that the secondary filter of Hutter is above the tertiary filter, and that therefore they are in relatively upper and lower portions, respectively.

Applicant also argues that Hutter does not show the primary filter being above the carrier or above the baffle. It is submitted that the claims do not require that the primary filter to be independent of and above the carrier, and that all three filters are shown as being above the baffle (34).

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date

of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Upton whose telephone number is 571-272-1169. The examiner can normally be reached on 7:30-5:00, off every other Monday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher Upton
Primary Examiner
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